IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 672 OF 1995

The State of Maharashtra ...Appellant.

Versus

1. Rizawat Abdul Kadar.
Age 26 years, Occ. Service,
R/o. Riyaz Ice & Cold
Storage, Sector 18,
Vashi Manupco,
Plot No. 31-33, Vashi,
New Mumbai.

2. Gulam Gafar Mundhe,
Age 45 years, Occ. Service,
R/o. Riyaz Ice & Cold
Storage, Sector 18,
Vashi Manupco,
Plot No. 31-33, Vashi,
New Mumbai. ...Respondents.

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Shri. A.S. Shitole, A.P.P. for the appellant.

Shri. K.D. Chavan i/b Shri. M.A. Patil for the respondents.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 7TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. the State of Maharashtra challenges the judgment and order dated 5.12.1994 passed by the learned J.M.F.C. Thane. By the said judgment and order

the learned Magistrate acquitted the respondents i.e. original accused Nos.1 and 2 for the offence under Sections 39 and 44 of the Indian Electricity Act and Section 379 of I.P.C.

2. The relevant facts of the case are as follows:-

. That the complainant P.W.7 Prakash Amble was a Deputy Executive Engineer. He was also a member of Flying Squad of Maharashtra State Electricity Board. On 28.12.93 he alongwith P.W.3 lineman R.B. Patil, P.W.4 lineman U.R. Misal, P.W.5 A.D. Kale and officers of the M.S.E.B., visited the Riyaz Ice and Cold Storage Company, Vashi for inspection of electricity meter. This visit was at the instance of the vigilance and Security of M.S.E.B. Bombay. On inspection of the meter, they found three holes on the side of the meter. The said holes were of one m.m. parameter. One hole was on the left side, one hole was on the right side and one hole was at the bottom of the meter. The said holes were closed by applying M. Seal. As per the complainant, the above position of the meter revealed that the accused used to stop the meter so that the actual consumption of electricity could not be recorded. After completion of the investigation, charge sheet came to be filed.

3. Accused appeared before the Court. Charge came to be framed against them. Accused pleaded not guilty and claimed to be tried. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted the respondents/ accused of the offences charged. Hence, this appeal.

4. I have heard Shri. Shitole, the learned A.P.P. for the appellant-State and Shri. Chavan i/b Shri. Patil, Adv. for respondents-accused. I have also perused the entire material on record. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

5. The most important witness in the present is the complainant i.e. P.W.7 Prakash Amble. He alongwith P.W.3 R.B. Patil, P.W.4 U.R. Misal and P.W.5 A.D. Kale visited the company on 28.12.93. He found that there were three holes on the side of the electricity meter. The said holes were of one m.m. parameter each. One hole was on the left side, one hole was on the right side and one hole was at the bottom of the meter. The said holes had been filled up by M. Seal. On seeing this position the complainant came to the conclusion that there was a theft of electricity and thus the complaint came to be filed.

6. In the present case, the evidence of the complainant revealed that the company was running at the time of visit and that meter was in working condition. However, he found three holes on the side of the meter and on the basis of these holes the complainant thought that the accused might have consumed electricity dishonestly prior to the incident. However, it is pertinent to note that the F.I.R. does not disclose the fact that the electricity has been consumed dishonestly.

7. It has come in the evidence of the complainant that at the time of the inspection the meter box seal was in intact condition. The complainant has admitted that the reading of the meter was showing as per the consumption and that energy was not being stolen at the time of visit. It is only on the ground that there were three holes on the side of meter, that the complainant assumed that there was theft of electricity. He has also admitted that there is no report of the meter reader that the bill was inadequate. In my opinion, merely because there were holes near the meter, in the absence of any other material on record, it cannot be said that electricity was stolen. The prosecution has failed in proving that there was presence of artificial means by which the

electricity was being consumed dishonestly. There must be artificial means for stoppage of meter or artificial means used for making the meter slow. In the present case, there is no such evidence on record. It is an admitted fact that at the time of inspection of the meter, the reading was as per the consumption of electricity and there was no means of preventing the rotation of the disc of the meter nor any other means were used to make the rotation of the meter disc slow.

8. In the present case it is undisputed that the company was in operation and the meter was indicating the units consumed and the accused were not present at the spot. As far as the accused No.2 is concerned, he is an employee and not the owner of the company. There is nothing on record to show that he is connected with the alleged offence. There is no evidence to show that he is taking part in any of the operations of the company. In this circumstance, he cannot be held to be a consumer as envisaged in Section 2(c) of the Indian Electricity Act and thus he cannot be held to be liable for the alleged offence.

9. The learned Magistrate has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could

have been reasonably arrived at, then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C. Anthony Vs. K.G. Raghavan Nair).** In the case of **C. Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

10. Taking all these facts into consideration, the conclusion arrived at by the learned Magistrate that the prosecution has not proved its case is a possible and reasonable view. Criminal appeal is dismissed. The appellants are on bail, their bail bonds stand cancelled.